SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 595

SWIFT AND COMPANY, ET AL.,
Appellants,

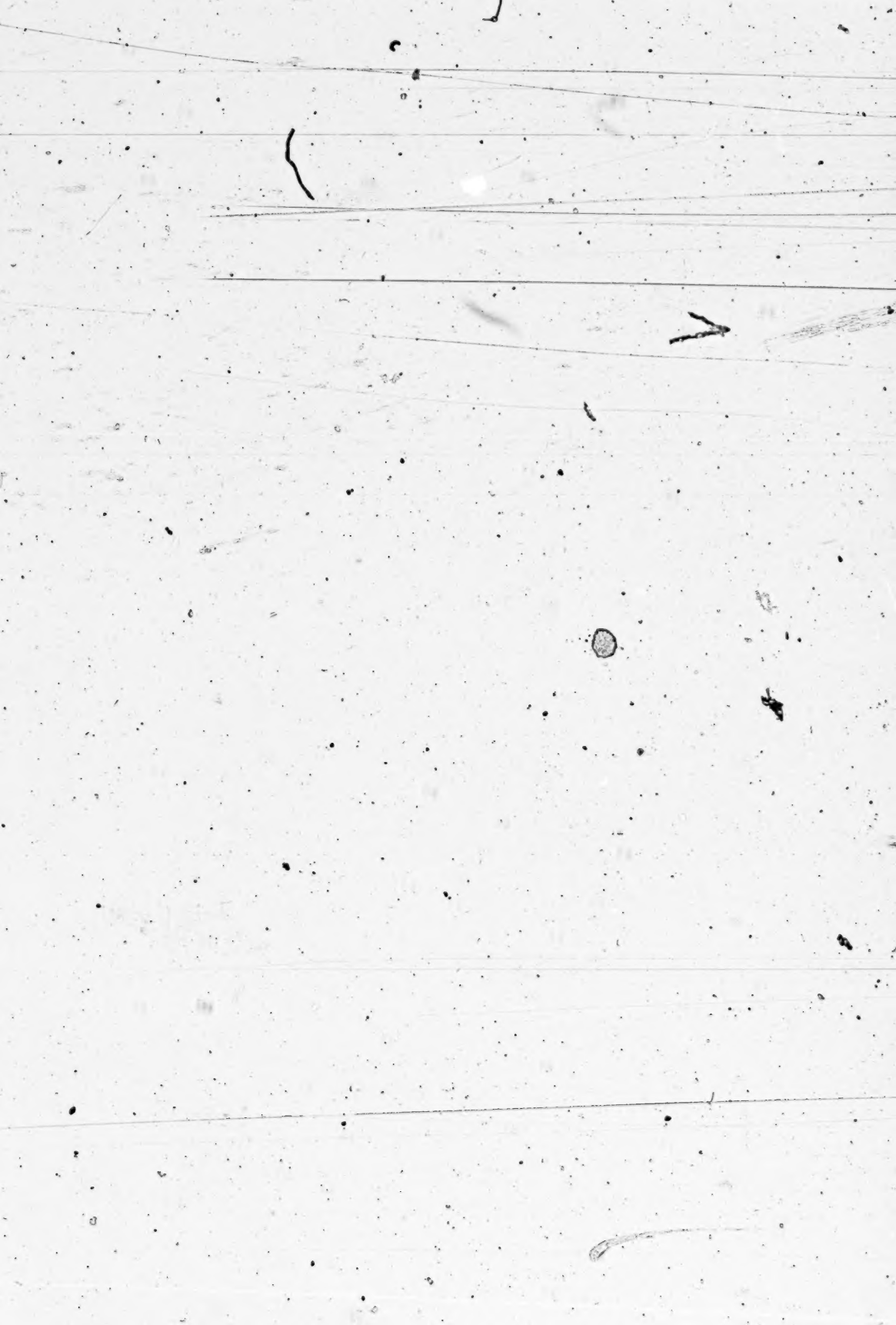
vs.

THE UNITED STATES OF AMERICA; INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

STATEMENT AS TO JURISDICTION.

EDGAR B. KIXMILLER,
ROSS DEAN RYNDER,
PAUL E. BLANCHARD,
Counsel for Appellants.



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STATUTES CITED.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF ILLINOIS, NORTHERN DISTRICT

CIVIL ACTION. No. 2188.

SWIFT AND COMPANY AND OMAHA PACKING COMPANY,

Plaintiffs,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

Defendants.

STATEMENT AS TO JURISDICTION OF UNITED STATES SUPREME COURT ON APPEAL.

In compliance with rule 12 of the revised rules of the Supreme Court of the United States, plaintiffs submit herewith their statement showing the basis of the jurisdiction of the Supreme Court to entertain the appeal in the above entitled cause:

I.

Statutes Relied Upon to Sustain Jurisdiction.

The pertinent provisions of the Interstate Commerce Act, amended, are as follows:

"Sec. 13. (*As amended June* 18, 1910, *February* 28, 1920, *and August* 9, 1935.) (*U. S. Code, title* 49, *sec.*

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13.) (1) That any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this part, in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper."

"Sec. 14. (*Amended March* 2, 1889, *June* 29, 1906, *and February* 28, 1920.) (*U. S. Code, title* 49, *sec.* 14.) (1) That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made.

"(2) All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of."

"Sec. 15. (*As amended June* 29, 1906, *June* 18, 1910, *February* 28, 1920, *March* 4, 1927, *June* 19, 1934, *and*

August 9, 1935.) (*U. S. Code, title* 49, *sec.* 15.) (1) That whenever, after full hearing, upon a complaint made as provided in section 13 of this part, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this part for the transportation of persons or property as defined in the first section of this part, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this part, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this part, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed."

The pertinent sections of Tit. 28, U. S. C. A. (Judicial Code), relating to review of the Commission's orders, are as follows:

"§ 41, subd. (27). Enforcement of orders of Interstate Commerce Commission. Twenty-seventh. Of all cases for the enforcement of any order of the Interstate Commerce Commission. (June 18, 1910, c. 309, sec. 1, 36 Stat. L. 539; Mar. 3, 1911, c. 231, sec. 207, 36 Stat. L. 1148; Oct. 22, 1913, c. 32, 38 Stat. L. 219.)"

"§ 41, subd. (28). Setting aside order of Interstate Commerce Commission. Twenty-eighth. Of cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission. (June 18, 1910, c. 309, § 1, 36 Stat. 539; Mar. 3, 1911, c. 231, § 207, 36 Stat. 1148; Oct. 22, 1913, c. 32, 38 Stat. 219.)"

"§ 43. Venue of suits relating to orders of Interstate Commerce Commission. The venue of any suit brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made, except that where the order does not relate to transportation or is not made upon the petition of any party the venue shall be in the district where the matter complained of in the petition before the commission arises, and except that where the order does not relate either to transportation or to a matter so complained of before the commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportation relates to a through shipment the term 'destination' shall be construed as meaning final destination of such shipment. (Oct. 22, 1913, c. 32, 38 Stat. 219.)"

"§ 44. Procedure in certain cases under interstate commerce laws; service of processes of court. The

procedure in the district courts (a) in respect to cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money shall be as provided in sections 45, 45a, 47a, and 48 of this title and (b) in respect to cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission shall be as provided in sections 45, 45a, 46, 47, 47a and 48 of this title. The orders, writs, and processes of the district courts may in the cases specified in this section and in the cases and proceedings under sections 20, 43 and 49 of Title 49, run, be served, and be returnable anywhere in the United States. (Oct. 22, 1913, c. 32, 38 Stat. 220.)"

"§ 45. (Judicial Code, section 209.) District courts; practice and procedure in certain cases. The jurisdiction of the district courts of the cases specified in section 44 of this title, and of the cases and proceedings under sections 20, 43 and 49 of Title 49, shall be invoked by filing in the office of the clerk of the court a written petition setting forth briefly and succinctly the facts constituting the petitioner's cause of action, and specifying the relief sought. A copy of such petition shall be forthwith served by the marshal or a deputy marshal of the district court or by the proper United States marshal or deputy marshal upon every defendant therein named, and when the United States is a party defendant, the service shall be made by filing a copy of said petition in the office of the Secretary of the Interstate Commerce Commission and in the Department of Justice. Within thirty days after the petition is served, unless that time is extended by order of the court or a judge thereof, an answer to the petition shall be filed in the clerk's office and a copy thereof mailed to the petitioner's attorney, which answer shall briefly and categorically respond to the allegations of the petition. No replication need be filed to the answer, and objections to the

sufficiency of the petition or answer as not setting forth a cause of action or defense must be taken at the final hearing or by motion to dismiss the petition based on said grounds, which motion may be made at any time before answer is filed. In case no answer shall be filed as provided herein the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged in the petition. The court may, by rule, prescribe the method of taking evidence in cases pending in said court. (June 18, 1910, c. 309, § 1, 36 Stat. 539; Mar. 3, 1911, c. 231, § 209, 36 Stat. 1149; Oct. 22, 1913, c. 32, 38 Stat. 219.)"

"§ 45a. (Judicial Code, sections 212, 213, amended.) Special attorneys; participation by Interstate Commerce Commission; intervention. The Attorney General shall have charge and control of the interests of the Government in the cases specified in section 44 of this title and in the cases and proceedings under sections 20, 43 and 49 of Title 49, in the district courts, and in the Supreme Court of the United States upon appeal from the district courts. If in his opinion the public interest requires it, he may retain and employ in the name of the United States, within the appropriations from time to time made by the Congress for such purposes, such special attorneys and counselors at law as he may think necessary to assist in the discharge of any of the duties incumbent upon him and his subordinate attorneys; and the Attorney General shall stipulate with such special attorneys and counsel the amount of their compensation, which shall not be in excess of the sums appropriated therefor by Congress for such purposes; and shall have supervision of their action: *Provided*, That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement or any part thereof, and the interest of such party;

and the court wherein is pending such suit may make all such rules and orders as to such appearances and representations, the number of counsel, and all matters of procedure, and otherwise, as to subserve the ends of justice, and speed the determination of such suits: *Provided further*, That communities, associations, corporations, firms, and individuals who are interested in the controversy or question before the Interstate Commerce Commission, or in any suit which may be brought by anyone under the provisions of the aforesaid sections relating to action of the Interstate Commerce Commission, may intervene in said suit or proceedings at any time after the institution thereof; and the Attorney General shall not dispose of or discontinue said suit or proceeding over the objection of such party or intervenor aforesaid, but said intervenor or intervenors may prosecute, defend, or continue said suit or proceeding unaffected by the action or nonaction of the Attorney General therein.

"Complainants before the Interstate Commerce Commission interested in a case shall have the right to appear and be made parties to the case and be represented before the courts by counsel, under such regulations as are now permitted in similar circumstances under the rules and practice of equity courts of the United States. (June 18, 1910, c. 309, § 5, 36 Stat. 543; Mar. 3, 1911, c. 231, §§ 212, 213, 36 Stat. 1150, 1151; Oct. 22, 1913, c. 32, 38 Stat. 220.)"

"§ 46. (Judicial Code, section 208.) Suits to enjoin orders of Interstate Commerce Commission to be against United States. Suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall be brought in the district court against the United States. The pendency of such suit shall not of itself stay or suspend the operation of the order of the Interstate Commerce Commission; but the court, in its discretion, may restrain or suspend, in whole or in part, the operation of the commission's order pending the final hearing and determination of the suit. (June 18, 1910, c. 309, § 3, 36 Stat. 542; Mar. 3, 1911, c. 231, § 208, 36 Stat. 1149.)"

"§ 47a. (Judicial Code, section 210.) Appeal to Supreme Court from final decree; time for taking; priority. A final judgment or decree of the district court in the cases specified in section 44 of this title may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases. And in such cases the notice required shall be served upon the defendants in the case and upon the attorney general of the State. The district court may direct the original record instead of a transcript thereof to be transmitted on appeal. The Supreme Court may affirm, reverse, or modify as the case may require the final judgment or decree of the district court in the cases specified in section 44 of this title. Appeal to the Supreme Court, however, shall in no case supersede or stay the judgment or decree of the district court appealed from, unless the Supreme Court or a justice thereof shall so direct, and appellant shall give bond in such form and of such amount as the Supreme Court, or the justice of that court allowing the stay, may require. Appeals to the Supreme Court under this section and section 47 of this title shall have priority in hearing and determination over all other causes except criminal causes in that court. (Mar. 3, 1911, c. 231, § 210, 36 Stat. 1150; Oct. 22, 1913, c. 32, 38 Stat. 220.)"

II.

Dates of Decree and Application for Appeal.

The final decree of the three-judge district court of the United States for the Eastern Division of Illinois, Northern District, was entered June 4, 1941. The application for appeal was filed July 10th, 1941, and allowed July 10th, 1941.

III.

Nature of the Case.

This is a suit brought by plaintiffs, Swift and Company and Omaha Packing Company, against the United States of America and the Interstate Commerce Commission for the purpose of suspending, enjoining, setting aside, and annulling a certain report and order of the Interstate Commerce Commission, known on the records of said commission as No. 27862, *Swift and Co.* v. *Alton R. Co.*, 238 I. C. C. 179. Armour and Company intervened before the Commission and in the District Court.

On or about September 18, 1937, plaintiffs filed with the Interstate Commerce Commission a complaint known upon the records of the Commission as No. 27862, *Swift and Co. et al.* v. *The Alton Railroad Co., et al.*, in which it was alleged in substance that by tariff publication, and by long usage and custom, the railroad defendants had constituted the Union Stock Yards, Chicago, Ill., as their terminal for the receipt and delivery of live stock in Chicago, Ill.; that the railroad defendants denied to plaintiffs, contrary to law and to specific provisions of the Interstate Commerce Act, the right to obtain from said railroad defendants, at reasonably convenient, safe, and suitable pens, ways, and alleys, possession of direct shipments of live stock consigned to plaintiffs at said live stock terminal of the railroad defendants at the Union Stock Yards, Chicago, Ill., and denied to plaintiffs egress for removal of such live stock from the unloading pens of said railroad defendants on the property of the Union Stock Yard and Transit Company of Chicago (the railroad defendants' only live stock terminal in Chicago) to the nearest public street or to the packing plant of plaintiff Swift and Company, via the shortest or most convenient way, to be designated by said

railroad defendants, without the payment to the railroad defendants' agent, The Union Stock Yard and Transit Company of Chicago, of yardage charges for yardage services not necessary to a delivery of live stock, in excess of and in addition to the lawful published tariff rates of said railroad defendants to their unloading pens upon the property of their agent, The Union Stock Yard and Transit Company of Chicago, said yardage charges being for services not necessary or desired by plaintiffs in order to obtain possession of their live stock, and being for services totally different from a mere delivery of said live stock, and being for stock yard services, such as holding, weighing, etc., none of which stock yard services were or are desired or requested by plaintiffs.

The prayer of the complaint before the Commission was in substance that the railroad defendants and each of them be required to cease and desist from said violations of the Interstate Commerce Act and to establish rules and regulations under which plaintiffs might obtain possession of their direct shipments of live stock from the railroad defendants at the unloading pens of the railroad defendants at the Union Stock Yards in Chicago, Ill., and be permitted egress from said unloading pens of the railroad defendants solely for the purpose of removal of said live stock from said unloading pens of said railroad defendants to the nearest public street, via the shortest or most convenient way, to be designated by the railroad defendants, without payment of yardage charges for yardage services neither desired, requested, nor necessary in connection with the delivery to plaintiffs of live stock by the railroad defendants, and without payment of any other than the lawful transportation charges of the railroad defendants for the transportation of such direct shipments from the origin points thereof to the railroad defendants' unloading pens at the Union Stock Yards in Chicago, as provided in the

tariffs of the railroad defendants filed with the Commission; and plaintiffs sought reparation for damages in the sum of $17,500, plus such amounts as might accrue due to similar violations of plaintiffs' rights by the railroad defendants during the pendency of the proceeding, with interest thereon.

After hearing by the Commission, the Commission entered its order and decision in said proceeding, No. 27862, *Swift and Co.* v. *Alton R. Co.*, 238 I. C. C. 179, in which it held in substance that plaintiffs were not entitled to egress from the railroad defendants' unloading pens at the Union Stock Yards, Chicago, to the nearest public street via the most convenient or direct route, to be designated by railroad defendants, without payment of yardage charges for yardage services (neither desired nor requested by plaintiffs) under the Packers and Stockyards Act, 1921, to railroad defendants' agent, The Union Stock Yard and Transit Company of Chicago.

Thereafter plaintiffs filed with the Commission a petition for reargument, reconsideration, and reversal of the Commission's order. Said petition was denied by the entire Commission by its order of July 8, 1940.

Thereafter, on or about October 7, 1940, plaintiffs filed their complaint herein in the United States District Court, for the Eastern Division of Illinois, Northern District, in which it was alleged that the decision of the Commission should be suspended, enjoined, set aside, and annulled because of alleged errors of law and fact in the Commission's decision. It was in general alleged that the findings of the Commission were unsupported by the evidence of record, contrary to the evidence of record, contrary to the weight of the evidence, arbitrary, confiscatory, and without due process of law; and that the failure of the Commission to decide said case in accordance with the facts of record and the law applicable thereto resulted in the payment by plaintiffs of unlawful rates and charges in order to obtain

possession of their live stock consigned to them at the railroad defendants' live stock terminal at the Union Stock Yards in Chicago, Ill.

On April 21, 1941, the cause came on for final hearing upon the merits before said United States District Court, specially constituted of three judges, as required by the Urgent Deficiencies Act of October 22, 1913 (U. S. C. A. tit. 28, §§ 41(27), 41(28), 43, 44, and 46).

On June 4, 1941, said court entered its final decree in this proceeding, in which it is ordered, adjudged, and decreed that the findings made by the Commission are adequate to support its conclusion that the transportation of direct shipments of live stock to the railroad defendants' live stock terminal at the Union Stock Yards, Chicago, is completed when the live stock is placed in the railroad defendants' unloading pens at the Union Stock Yards, and that yardage charges assessed by the Union Stock Yard and Transit Company for services performed and facilities used beyond the gates leading from the pens in the stock yards, into which the live stock is unloaded from the railroad cars, are not subject to the jurisdiction of the Commission, and that the failure of the railroad defendants to afford egress for direct shipments of live stock transported to their live stock terminal at the Union Stock Yards, Chicago, is not contrary to law and does not result in an unreasonable practice; and that plaintiffs are not entitled to the setting aside or annulling of said order of April 8, 1940, or to a permanent injunction against its enforcement, or to any relief.

IV.

Decisions Relied Upon to Sustain Jurisdiction of Supreme Court on Appeal.

Appeal to the Supreme Court of the United States is provided in § 47a of Title 28 of the United States Code,

quoted herein. The decisions in which the Supreme Court has exercised its appellate jurisdiction in cases coming within the statutory provisions quoted are very numerous. Amongst those of more recent date which may be cited are the following:

United States v. *Berwind-White Coal Min. Co.*, 274 U. S. 564, 71 L. Ed. 1204;

St. Louis & O'Fallon R. Co. v. *United States*, 279 U. S. 461, 73 L. Ed. 798;

Tagg Bros. & Moorhead v. *United States*, 280 U. S. 420, 74 L. Ed. 524;

Ann Arbor R. Co. v. *United States*, 281 U. S. 658, 74 L. Ed. 1098;

Beaumont, S. L. & W. R. Co. v. *United States*, 282 U. S. 74, 75 L. Ed. 221;

Florida v. *United States*, 282 U. S. 194, 75 L. Ed. 291;

United States v. *Chicago, M., St. P. & P. R. Co.*, 282 U. S. 311, 75 L. Ed. 359;

Chicago, R. I. & P. R. Co. v. *United States*, 284 U. S. 80, 76 L. Ed. 177;

Atchison, T. & S. F. R. Co. v. *United States*, 284 U. S. 248, 76 L. Ed. 273;

Texas & P. R. Co. v. *United States*, 289 U. S. 627, 77 L. Ed. 1410;

United States v. *Louisiana*, 290 U. S. 70, 78 L. Ed. 181;

United States v. *Baltimore & O. R. Co.*, 293 U. S. 454, 79 L. Ed. 587;

Atchison, T. & S. F. R. Co. v. *United States*, 295 U. S. 193, 79 L. Ed. 1382;

Baltimore & O. R. Co. v. *United States*, 298 U. S. 349, 80 L. Ed. 1209;

United States v. *American S. & T. Plate Co.*, 301 U. S. 402, 81 L. Ed. 1186;

United States v. *Pan American P. Corp.*, 304 U. S. 156, 82 L. Ed. 1262;

Rochester Telephone Corp. v. *United States*, 307 U. S. 125, 83 L. Ed. 1147;

United States v. *Maher*, 307 U. S. 148, 83 L. Ed. 1162;

Federal Power Com. v. *Pacific Power & Lt. Co.*, 307 U. S. 156, 83 L. Ed. 1180;

Union Stock Yard & T. Co. v. *United States*, 308 U. S. 213, 84 L. Ed. 198;

No. 577, *Mitchell* v. *United States*, decided April 28, 1941 (L. Ed. Adv. Ops. 1940-41, vol. 85, no. 13, p. 811).

Respectfully submitted,

EDGAR B. KIXMILLER,
ROSS DEAN RYNDER,
Solicitors for Plaintiffs,
Swift and Company,
Omaha Packing Company.

PAUL E. BLANCHARD,
Solicitor for Intervenor,
Armour and Company.

EXHIBIT "A".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF ILLINOIS, NORTHERN DISTRICT.

Civil Action. No. 2188.

SWIFT AND COMPANY and OMAHA PACKING COMPANY, *Plaintiffs,*

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Defendants.*

Findings of Fact and Conclusions of Law.

Pursuant to the rules of civil procedure, the court makes the following findings of fact and states the following conclusions of law upon the entire record in the above-entitled action.

FINDINGS OF FACT.

1. By complaint filed with the Interstate Commerce Commission on September 20, 1937, against the Alton Railroad Company and other common carriers by railroad, Swift & Company, G. H. Hammond Company and Omaha Packing Company, wholly owned subsidiaries of Swift & Company, alleged that the railroads defendants' failure to afford the right of egress for livestock from unloading pens at the Union Stock Yards in Chicago, owned and operated by the Union Stock Yards & Transit Company at Chicago, to the nearest public street, in connection with direct shipments of livestock consigned to complainants, free from any charge other than the line-haul rate, had resulted and results in an unreasonable practice in violation of the Interstate Commerce Act.

2. Complainants Swift & Company and Omaha Packing Company are engaged in the packing house business and operate packing plants for the processing of livestock at

Chicago, Ill., which plants are located adjacent to the Union Stock Yards in Chicago.

3. The complaint was docketed by the Interstate Commerce Commission as No. 27862, *Swift & Company et al. v. Alton Railroad Company et al.*, the defendants being common carriers by railroad engaged in the transportation of livestock to Chicago. The Union Stock Yard & Transit Company was not named as a defendant.

4. In the complaint heretofore referred to, the Commission was asked to require the railroads defendants to cease and desist from the alleged unlawful practice, and to establish and maintain reasonable means of egress from the unloading pens at the Union Stock Yards to the public streets free from the payment of any charges other than the line-haul rate. The Commission was also asked to award reparation to each complainant for the charges paid by reason of the unlawful practice during the period of two years preceding the filing of the complaint and during the pendency of the proceeding.

5. Answers to the complaint were filed by the railroads defendants; Armour and Company was permitted to intervene in support of the complaint, full hearings were held before an examiner of the Commission, briefs were filed, and examiner's proposed report was issued, to which complainants filed exceptions, which exceptions were replied to by defendants, and the proceeding was orally argued before the entire Commission.

6. On April 8, 1940, the Commission issued its report, 238 I. C. C. 179, annexed to and made a part of the bill of complaint as Exhibit B, in which the Commission, among other things, found:

We find that the transportation of direct shipments of livestock consigned to complainant at the Union Stockyards in Chicago, Ill., ends when the livestock has been unloaded into the unloading pens at the Union Stock Yards. We further find that the yardage charges assessed by the Union Stock Yards and Transit Company of Chicago on direct shipments of livestock, as defined in the report,

transported to the Union Stock Yards, for services performed and facilities used beyond the gates leading from the pens in the stockyards into which the livestock is unloaded from railroad cars, are not subject to our jurisdiction.

We further find that defendants' failure to afford egress for shipments of livestock described in the preceding paragraph free from the payment of yardage charges has not resulted and does not result in an unreasonable practice.

7. The Commission further found that after the livestock arrives at the Union Stock Yards, it proceeds to unloading platforms on the property of and owned by the Yard Company where the car door is opened by employees of the Yard Company and the livestock driven by its employees through chutes into unloading pens adjacent to the unloading platforms. As to the shipments for Swift & Company, if its employees are at the unloading platforms when the animals are placed therein, they are driven by Swift's employees from the unloading pens through the property of the Yard Company to the plant of Swift & Company located outside the stock yards. If Swift's employees are not at the unloading pens, and the volume of livestock necessitates immediate removal of the animals, they are taken from the unloading pens to holding pens by employees of the Yard Company; later they are driven from the holding pens through the Yard Company's property to Swift's plant by Swift's employees. Whether possession is taken at the unloading pens or at the holding pens, Swift is required to pay a yardage charge to the Yard Company on each animal, under authority of a tariff on file with the Secretary of Agriculture.

8. The Commission's report states that it is physically impossible to remove livestock from the unloading pens in the stock yards to complainant's plant or to public streets except by use of the Yard Company's property. It is shown that these yardage charges are assessed and collected by the Yard Company on every animal unloaded from railroad cars at the stockyards, which is the largest livestock market in the United States and the only public market for the sale

of livestock in the City of Chicago. These charges, so the Commission found, are compensation for services performed by and the use of facilities of the Yard Company after the stock is placed in unloading pens. For the efficient and orderly handling of the large number of shipments arriving at the stock yards, employees of the Yard Company are the only ones permitted to handle the livestock when it reaches the unloading platform.

9. The Commission further found that for more than seventy years, or during its entire existence, the Union Stock Yards Company has assessed and collected from the shipper a yardage charge on every animal unloaded on its premises. Most of plaintiff's shipments are now being made to the plant of its subsidiary, the Omaha Packing Company, located about two miles from the Union Stock Yards, and the stock received at the plant of the Omaha Packing Company is transported by motor truck over the streets of Chicago to the Swift plant without the payment of the yardage charge.

10. The Commission further found that for more than seventy years it has been the practice of the Union Stock Yards Company to collect a yardage charge on every animal unloaded from the car at Union Stock Yards, and this practice was accepted as a reasonable practice by the interested parties until 1933, when complainant made its first protest against the practice.

11. The Commission's report also states:

During a substantial portion of the period referred to, complainant not only paid the yardage charge without protest, but, in association with other packers, demanded and received participation with the Yard Company in the profits of the latter company.

12. The report also finds that because of the physical conditions existing in the Union Stock Yards, the railroads could not provide egress from the unloading pens to a public street without use of the property of the Yard Company.

13. The Commission in its report, after reviewing the evidence, found:

The evidence shows that for more than 70 years, under the usage and practice at the Union Stock Yards, the responsibility of the railroads in respect of direct shipments of livestock consigned to said yards had ended with the unloading service, and that by affirmative action, beginning about 1890 and continuing for many years, the packers, including complainant and intervener, insisted that the performance of the yardage service upon their shipments was a private matter between themselves and the Yard Company, unaffected by the tariffs covering the transportation charges of the railroad. • • •

14. The Commission's report points out that the line-haul carriers have never performed services on direct shipments of livestock transported to the Union Stock Yards after it is unloaded, and they have no voice in the nature of the yard services provided or in the manner in which they are performed; they have never been compensated for any services performed at the stockyards after the placement of the animals in the unloading pens. The rates applicable on livestock transported to the stockyards do not include any allowance to cover yardage services.

15. The Commission also found that under the railroad tariffs, the shippers of livestock have the choice of consigning their shipments to the Union Stock Yards, and having them unloaded there without extra charge, or taking delivery on team tracks at other points in the Chicago district, in which event they unload the cars themselves; "that direct shipments of livestock are unloaded at the Union Stock Yards only when complainant elects to take delivery there."

16. After reviewing the evidence of record, including the long-standing practices and customs in the industry, the Commission found and held that Section 15(5) of the Interstate Commerce Act could not be construed as

imposing an obligation upon defendants to compensate the public stockyards for the use of the facilities necessarily involved in removing the direct shipments from the suitable unloading pens to the boundary of the Yard Company's property.

17. The Commission further found that for almost 50 years prior to the decision of the Supreme Court in 1912 holding the Yard Company to be a common carrier, the company had maintained two charges, one for unloading the livestock and a yardage charge imposed upon all animals in addition to the unloading charge. Also that no tariff of the Yard Company on file with the Commission ever included yardage charges.

18. The Commission found that the obligation of the carriers in transporting ordinary livestock in carload lots to public stock yards is to make delivery into pens on the stock yards' property which are suitable to receive the stock in a safe manner; that there is a distinction between transportation to public stock yards generally and transportation to other than public stock yards, and that the carriers' duty with respect to livestock consigned to the Chicago Union Stock Yards ended upon delivery into suitable pens and did not include the removal of the livestock from such pens to a point outside the Stock Yards.

Following this finding the Commission's report states:

> The above interpretation is the interpretation placed upon the amendment since its enactment by the actions of the packers, including complainant and intervener, of the producers, of the Yard Company, and of the railroads. For more than 50 years prior to the enactment of section 15(5) and since its enactment, usage and physical conditions combined to end transportation on direct shipments of livestock at the unloading pens. The packers, including complainant and intervener, not only acquiesced in the usage and practice but, in addition, by their agreements with the Yard Company and their participation in the earnings of that company received from its yardage charges, by their guarantee for a limited period of earnings to the Yard Company, and by other acts hereinbefore described, have concurred in the practice and have made it their own.

19. On the same date as that on which its report was issued, namely April 8, 1940, the Commission issued an order dismissing the complaint; whereupon a petition for

reargument and reconsideration was filed by complainants, replied to by railroads defendants, and denied by the Commission on July 8, 1940. This suit was instituted upon complaint filed October 7, 1940, by Swift & Company and Omaha Packing Company, organized and existing under and pursuant to the laws of the States of Illinois and Kentucky, whose principal offices and places of business are in Chicago. The matter covered by the aforesaid order of the Commission, now sought to be set aside, was entered upon the petition of complainants, residents of the Northern District of Illinois, Eastern Division, within the meaning of Section 43 of Title 28 of the U. S. Code, and this court has jurisdiction.

20. Defendant, United States of America, is sued herein pursuant to Sections 43 to 48, Title 28 of the U. S. Code.

21. The defendant, Interstate Commerce Commission, is an administrative commission existing under and by virtue of the Interstate Commerce Act, U. S. Code, Title 49, and is specifically charged with the administration and enforcement of the provisions of said act.

22. The Alton Railroad Company and other common carriers by railroad serving the Union Stock Yards intervened as parties defendant, and filed answers to the bill of complaint.

23. Complainants herein prayed, among other things, that upon final hearing this court adjudge, order and decree that said order of the Commission of April 8, 1940, is, and at all times has been, beyond the lawful authority of the Commission, is null and void, and should be perpetually set aside and annulled.

24. The United States of America and the Interstate Commerce Commission filed their respective answers to the complaint. Said answers, in substance, admitted the making of the report and order of the Commission complained of; denied that said order was made without adequate findings and evidence to support it; denied that said order was in any other respect unlawful, and by amended answer al-

leged that the court had no authority, in so far as reparation was sought, to grant the relief prayed. The answers of these defendants, as well as the answer of intervening railroads defendants, alleged that said order of April 8, 1940, was made after full hearing and consideration of all the evidence before the Commission and of all the arguments advanced by the parties, and that it was supported by adequate findings and substantial evidence.

25. On April 21, 1941, the cause came on for final hearing upon the merits before this court, specially-constituted of three judges, as required by the Urgent Deficiencies Act of October 22, 1913. On such hearing there was before the court, and the court considered, the entire record of the evidence before the Commission, including the transcript of testimony taken before the Commission and the exhibits introduced in evidence before the Commission.

Conclusions of Law.

1. The findings made by the Commission are adequate to support its conclusion that the transportation of direct shipments of livestock to the Union Stock Yards at Chicago is completed when the livestock is placed in the unloading pens, and that yardage charges assessed by the Stock Yards Company for services performed, and facilities used beyond the gates leading from the pens in the stock yards, into which the livestock is unloaded from railroad cars, is not subject to the jurisdiction of the Commission, and that the failure of the railroad defendants to afford egress for direct shipments of livestock transported to the Union Stock Yards did not result in an unreasonable practice.

2. The Commission had evidence before it sufficient to sustain its findings.

3. The order of the Commission dated April 8, 1940, was within the lawful authority of the Commission, was not arbitrary or capricious and does not deprive plaintiffs of their property without due process of law.

4. Plaintiffs are not entitled to the setting aside or annulling of said order of April 8, 1940, or to a permanent injunction against its enforcement, or to any relief.

A decree dismissing the complaint is entered herein.

WILLIAM M. SPARKS,
United States Circuit Judge;
PHILIP L. SULLIVAN,
United States District Judge;
M. L. IGOE,
United States District Judge.

Dated this 4th day of June, 1941. Chicago, Ill.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF ILLINOIS, NORTHERN DISTRICT.

Civil Action. No. 2188.

SWIFT AND COMPANY and OMAHA PACKING COMPANY,
Plaintiffs,
v.
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Defendants.*

Final Decree.

Filed ———————, 1941.

The above-entitled action having been brought to set aside and annul and to perpetually enjoin the enforcement of an order of the Interstate Commerce Commission, dated April 8, 1940, in Docket No. 27862, *Swift & Company et al. v. Alton Railroad Company et al.*, 238 I. C. C. 179, and the cause, pursuant to 28 U. S. C. A. section 47, having been heard upon final hearing before a court of three judges on April 21, 1941, as in said section provided, the court upon consideration of the complaint

Orders, adjudges and decrees that the complaint should be, and the same is hereby, dismissed.

WILLIAM M. SPARKS,
United States Circuit Judge;
PHILIP L. SULLIVAN,
United States District Judge;
M. L. IGOE,
United States District Judge.

Dated this 4th day of June, 1941. Chicago, Ill.